



## Bill Draft 2011-RBxz-1A: Revenue Laws Technical Bill - Part II

2011-2012 General Assembly

**Committee:** Revenue Laws Study Committee  
**Introduced by:**  
**Analysis of:** 2011-RBxz-1A

**Date:** January 5, 2011  
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Committee Counsel

**SUMMARY:** *The changes in this proposal would be in addition to the changes distributed at the December 1, 2010 meeting in Bill Draft 2011-RBxz-1.*

### BILL ANALYSIS:

Section	Explanation
1	<p>Clarifies that a retailer who provides accommodations is liable for sales tax on the amount it charges a facilitator for an accommodation. During the 2010 Session, the General Assembly established new sales and use tax reporting and remittance obligations on "facilitators," which are entities that enter into a contract with the providers of accommodations to market and collect payment for accommodation rentals. An example of a facilitator is an online travel company, such as Expedia or Travelocity.</p> <p>The Department of Revenue has raised concerns that the amended statute, which provides that "a retailer is not liable for tax due but not received from a facilitator," is unclear with regard to a retailer's liability. This section would clarify that a retailer is liable for tax due on the "wholesale" rate it charges a facilitator, but it is not liable for amounts due on charges imposed by a facilitator that the facilitator fails to send to the retailer.</p> <p>This section is effective when it becomes law and applies to gross receipts derived from the rental of an accommodation that a consumer occupies or has the right to occupy on or after January 1, 2011.</p>
2	<p>Provides that a facilitator would not be liable for an overcollection or an undercollection of sales tax or local occupancy tax during the period of January 1, 2011, through April 1, 2011, as the result of the new collection and remittance obligations imposed under Section 31.6 of S.L. 2010-31 as long as the facilitator made a good faith effort to comply with the law and collect the proper amount of tax.</p>
3	<p>Clarifies that use tax is payable by an individual on an annual basis for purchases made outside the State for a nonbusiness purpose of digital property and certain services. In 2009, the General Assembly imposed the State and local general rate of sales tax on certain digital goods, such as downloaded music and books. The legislation also made several conforming changes by adding the term "digital property" to a number of other sales tax statutes. Among them, the term "digital property" was added to the statute that sets out when an individual is required to pay use tax on out-of-State purchases. Since digital property was being subjected to sales tax, a corresponding change was made to subject it to use tax if it is purchased out of State.</p> <p>The Department of Revenue is interpreting the statute to exclude digital property and services from the annual use tax reporting requirement. This section clarifies that the "other than" phrase applies only to boats and aircraft. All other tangible personal property, digital property, and taxable services purchased outside the State for a nonbusiness use are subject to the annual reporting requirement for use tax.</p>

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**EFFECTIVE DATE:** Except as otherwise provided, the proposal would become effective when it becomes law.

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